

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANTHONY B. HARRIS,

Petitioner,

v.

1:05-cv-2943-WSD

WARDEN RON WILEY,

Respondent.

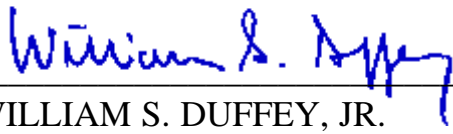
ORDER

This matter is before the Court on the Report and Recommendation issued by Magistrate Judge Hagy [2] on Petitioner's habeas corpus petition. Because no objections to the Report and Recommendation have been filed, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984). After careful review, the Court finds no plain error in the Magistrate Judge's factual or legal conclusions. The Court specifically finds that Petitioner's state habeas corpus petition was not pending when Petitioner's action under 28 U.S.C. § 2244 (d)(2) was filed and thus the state petition did not toll the time for filing Petitioner's federal petition. The Court further agrees Petitioner does not allege a basis for equitable tolling of the

limitations period and does not allege facts suggesting actual innocence of the state conviction at issue. Accordingly,

IT IS HEREBY ORDERED that the Court **ADOPTS AS ITS ORDER** the Magistrate Judge's Report and Recommendation. The instant petition for habeas corpus relief is **DISMISSED**. The Clerk is **DIRECTED** to close this case.

SO ORDERED, this 30th day of January, 2006.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE